

AMENDED IN SENATE JUNE 13, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2913

Introduced by Committee on Governmental Organization (Assembly Members Gray (Chair), Bigelow (Vice Chair), Alejo, Bonta, Campos, Cooley, Cooper, Daly, Gallagher, Gipson, Jones-Sawyer, Levine, Linder, Maienschein, Salas, and Wilk)

March 17, 2016

An act to amend ~~Section 23355.3~~ *Sections 23355.3, 25503.6, and 25503.8* of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2913, as amended, Committee on Governmental Organization. Alcoholic beverages: ~~licensees~~: *licensees: tied-house restrictions*.

The Alcoholic Beverage Control Act regulates the application for, the issuance of, the suspension of, and the conditions imposed upon, various alcoholic beverage licenses pursuant to which the licensees may exercise specified privileges in the state. The act authorizes licensees to sponsor or otherwise participate in an event conducted by, and for the benefit of, a nonprofit organization in which retail and nonretail licensees are involved as sponsors or participants, subject to specified conditions.

The act authorizes a nonretail licensee to advertise or communicate sponsorship or participation in the event and provides that advertising or communication may include, but is not limited to, initiating, sharing, reposting, or otherwise forwarding a social media post by a permanent retail licensee or a nonretail licensee, as specified.

This bill would delete the word “initiating” from that provision.

The act also prohibits a retail licensee from receiving any advertising, sale, or promotional benefit from any permanent retail licensee in connection with the sponsorship or participation.

This bill ~~instead~~ would *instead* prohibit a nonretail licensee from receiving that advertising, sale, or promotional benefit.

Existing law authorizes specified licensees, including distilled spirits rectifiers, to purchase advertising space and time from, or on behalf of, an on-sale retail licensee, under certain conditions, if the on-sale retail licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or major tenant of specified facilities. Existing law makes it a crime for an on-sale licensee to coerce certain licensees to purchase advertising space or time, as specified.

This bill would revise these authorizations to instead allow a rectifier to purchase the above-described advertising space and time and would include rectifiers as licensees subject to specified criminal provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23355.3 of the Business and Professions
- 2 Code is amended to read:
- 3 23355.3. (a) A licensee may sponsor or otherwise participate
- 4 in an event conducted by, and for the benefit of, a nonprofit
- 5 organization in which retail and nonretail licensees are involved
- 6 as sponsors or participants, subject to all of the following
- 7 conditions:
- 8 (1) Except as otherwise provided in this section, any payment
- 9 of money or other consideration for sponsorship or participation
- 10 in the event shall be made only to the nonprofit organization
- 11 conducting the event.

1 (2) Except as otherwise provided in this section, a nonretail
2 licensee shall not, directly or indirectly, pay money or provide any
3 other thing of value to a permanent retail licensee that is also a
4 sponsor of, or participant in, the event.

5 (3) A nonretail licensee may donate alcoholic beverages to a
6 nonprofit only as otherwise authorized by Section 25503.9.

7 (4) Except as otherwise provided by this division, a retail
8 licensee shall not give, sell, or furnish any alcoholic beverages to
9 the temporary licensee.

10 (5) A nonretail or retail licensee may choose to participate in
11 any level of sponsorship, including at the name or principal sponsor
12 level. A nonprofit organization may choose to have one, or
13 multiple, name or principal sponsors.

14 (6) (A) A nonretail licensee may advertise or communicate
15 sponsorship or participation in the event. This advertising or
16 communication may include, but is not limited to, sharing,
17 reposting, or otherwise forwarding a social media post by a
18 permanent retail licensee or a nonretail licensee if the advertisement
19 or communication does not contain the retail price of any alcoholic
20 beverage or otherwise promotes a retail licensee beyond its
21 sponsorship or participation in the event.

22 (B) A nonretail licensee shall not pay or reimburse a permanent
23 licensee, directly or indirectly, for any advertising services,
24 including by way of social media. Except as otherwise permitted
25 by this section, a permanent retail licensee shall not accept any
26 payment or reimbursement, directly or indirectly, for any
27 advertising services offered by a nonretail licensee.

28 (C) For the purposes of this subdivision, “social media” means
29 a service, platform, application, or site where users communicate
30 and share media, such as pictures, videos, music, and blogs, with
31 other users.

32 (7) A nonretail licensee shall not require, directly or indirectly,
33 as a condition of sponsorship or participation in any event under
34 this section, that its products be sold or served exclusively at the
35 event. A nonretail licensee shall not receive, directly or indirectly,
36 any advertising, sale, or promotional benefit from any permanent
37 retail licensee in connection with the sponsorship or participation.
38 A permanent retail licensee shall not offer or provide a nonretail
39 licensee any advertising, sale, or promotional benefit in connection
40 with the sponsorship or participation.

1 (b) This section does not authorize a nonretail licensee to pay,
2 in whole or in part, any costs, including the cost of sponsorship,
3 of any retail licensee that is sponsoring or participating in a
4 nonprofit event.

5 (c) A licensee that sponsors or participates in a nonprofit event
6 under this section shall keep detailed records of its sponsorship or
7 participation and shall maintain those records for a period of at
8 least three years. These records shall be provided to the department
9 upon request.

10 (d) Nothing in this section shall be deemed to exempt the
11 nonprofit organization from obtaining any licenses or permits as
12 may be required to conduct the event.

13 *SEC. 2. Section 25503.6 of the Business and Professions Code*
14 *is amended to read:*

15 25503.6. (a) Notwithstanding any other provision of this
16 chapter, a beer manufacturer, the holder of a winegrower's license,
17 ~~a distilled spirits rectifier~~, a distilled spirits manufacturer, or
18 distilled spirits manufacturer's agent may purchase advertising
19 space and time from, or on behalf of, an on-sale retail licensee
20 subject to all of the following conditions:

21 (1) The on-sale licensee is the owner, manager, agent of the
22 owner, assignee of the owner's advertising rights, or the major
23 tenant of the owner of any of the following:

24 (A) An outdoor stadium or a fully enclosed arena with a fixed
25 seating capacity in excess of 10,000 seats located in Sacramento
26 County or Alameda County.

27 (B) A fully enclosed arena with a fixed seating capacity in
28 excess of 18,000 seats located in Orange County or Los Angeles
29 County.

30 (C) An outdoor stadium or fully enclosed arena with a fixed
31 seating capacity in excess of 8,500 seats located in Kern County.

32 (D) An exposition park of not less than 50 acres that includes
33 an outdoor stadium with a fixed seating capacity in excess of 8,000
34 seats and a fully enclosed arena with an attendance capacity in
35 excess of 4,500 people, located in San Bernardino County.

36 (E) An outdoor stadium with a fixed seating capacity in excess
37 of 10,000 seats located in Yolo County.

38 (F) An outdoor stadium and a fully enclosed arena with fixed
39 seating capacities in excess of 10,000 seats located in Fresno
40 County.

1 (G) An athletic and entertainment complex of not less than 50
2 acres that includes within its boundaries an outdoor stadium with
3 a fixed seating capacity of at least 8,000 seats and a second outdoor
4 stadium with a fixed seating capacity of at least 3,500 seats located
5 in Riverside County.

6 (H) An outdoor stadium with a fixed seating capacity in excess
7 of 1,500 seats located in Tulare County.

8 (I) A motorsports entertainment complex of not less than 50
9 acres that includes within its boundaries an outdoor speedway with
10 a fixed seating capacity of at least 50,000 seats, located in San
11 Bernardino County.

12 (J) An exposition park, owned or operated by a bona fide
13 nonprofit organization, of not less than 400 acres with facilities
14 including a grandstand with a seating capacity of at least 8,000
15 people, at least one exhibition hall greater than 100,000 square
16 feet, and at least four exhibition halls, each greater than 30,000
17 square feet, located in the City of Pomona or the City of La Verne
18 in Los Angeles County.

19 (K) An outdoor soccer stadium with a fixed seating capacity of
20 at least 25,000 seats, an outdoor tennis stadium with a fixed
21 capacity of at least 7,000 seats, an outdoor track and field facility
22 with a fixed seating capacity of at least 7,000 seats, and an indoor
23 velodrome with a fixed seating capacity of at least 2,000 seats, all
24 located within a sports and athletic complex built before January
25 1, 2005, in the City of Carson in Los Angeles County.

26 (L) An outdoor professional sports facility with a fixed seating
27 capacity of at least 4,200 seats located in San Joaquin County.

28 (M) A fully enclosed arena with a fixed seating capacity in
29 excess of 13,000 seats in the City of Inglewood.

30 (N) (i) An outdoor stadium with a fixed seating capacity of at
31 least 68,000 seats located in the City of Santa Clara.

32 (ii) A beer manufacturer, the holder of a winegrower's license,
33 ~~a distilled spirits rectifier~~, a distilled spirits manufacturer, or
34 distilled spirits manufacturer's agent may purchase advertising
35 space and time from, or on behalf of, a major tenant of an outdoor
36 stadium described in clause (i), provided the major tenant does not
37 hold a retail license, and the advertising may include the placement
38 of advertising in an on-sale licensed premises operated at the
39 outdoor stadium.

(O) A complex of not more than 50 acres located on the campus of, and owned by, Sonoma State University dedicated to presenting live artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural and entertainment events and performances with venues that include a concert hall with a seating capacity of approximately 1,500 seats, a second concert hall with a seating capacity of up to 300 seats, an outdoor area with a seating capacity of up to 5,000 seats, and a further outdoor area with a seating capacity of up to 10,000 seats. With respect to this complex, advertising space and time may also be purchased from or on behalf of the owner of the complex, a long-term tenant or licensee of the venue, whether or not the owner, long-term tenant, or licensee holds an on-sale license.

(P) A fairgrounds with a horse racetrack and equestrian and sports facilities located in San Diego County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the exposition park, stadium, or arena owned by the on-sale licensee. With respect to an exposition park as described in subparagraph (J) of paragraph (1) that includes at least one hotel, the advertising space or time shall not be displayed on or in any hotel located in the exposition park, or purchased in connection with the operation of any hotel located in the exposition park. With respect to the complex described in subparagraph (O) of paragraph (1), the advertising space or time shall be purchased only in connection with live artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural and entertainment events and performances to be held on the premises of the complex.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the ~~distilled spirits~~ rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent that purchased the advertising space or time.

1 (b) Any purchase of advertising space or time pursuant to
2 subdivision (a) shall be conducted pursuant to a written contract
3 entered into by the beer manufacturer, the holder of the
4 winegrower's license, the ~~distilled spirits~~ rectifier, the distilled
5 spirits manufacturer, or the distilled spirits manufacturer's agent
6 and any of the following:

7 (1) The on-sale licensee.

8 (2) With respect to clause (ii) of subparagraph (N) of paragraph
9 (1) of subdivision (a), the major tenant of the outdoor stadium.

10 (3) With respect to subparagraph (O) of paragraph (1) of
11 subdivision (a), the owner, a long-term tenant of the complex, or
12 licensee of the complex, whether or not the owner, long-term
13 tenant, or licensee holds an on-sale license.

14 (c) Any beer manufacturer or holder of a winegrower's license,
15 any ~~distilled spirits~~ rectifier, any distilled spirits manufacturer, or
16 any distilled spirits manufacturer's agent who, through coercion
17 or other illegal means, induces, directly or indirectly, a holder of
18 a wholesaler's license to fulfill all or part of those contractual
19 obligations entered into pursuant to subdivision (a) or (b) shall be
20 guilty of a misdemeanor and shall be punished by imprisonment
21 in the county jail not exceeding six months, or by a fine in an
22 amount equal to the entire value of the advertising space, time, or
23 costs involved in the contract, whichever is greater, plus ten
24 thousand dollars (\$10,000), or by both imprisonment and fine. The
25 person shall also be subject to license revocation pursuant to
26 Section 24200.

27 (d) Any on-sale retail licensee, as described in subdivision (a),
28 who, directly or indirectly, solicits or coerces a holder of a
29 wholesaler's license to solicit a beer manufacturer, a holder of a
30 winegrower's license, a ~~distilled spirits~~ rectifier, a distilled spirits
31 manufacturer, or a distilled spirits manufacturer's agent to purchase
32 advertising space or time pursuant to subdivision (a) or (b) shall
33 be guilty of a misdemeanor and shall be punished by imprisonment
34 in the county jail not exceeding six months, or by a fine in an
35 amount equal to the entire value of the advertising space or time
36 involved in the contract, whichever is greater, plus ten thousand
37 dollars (\$10,000), or by both imprisonment and fine. The person
38 shall also be subject to license revocation pursuant to Section
39 24200.

1 (e) For the purposes of this section, “beer manufacturer” includes
2 any holder of a beer manufacturer’s license, any holder of an
3 out-of-state beer manufacturer’s certificate, or any holder of a beer
4 and wine importer’s general license.

5 (f) The Legislature finds that it is necessary and proper to require
6 a separation among manufacturing interests, wholesale interests,
7 and retail interests in the production and distribution of alcoholic
8 beverages in order to prevent suppliers from dominating local
9 markets through vertical integration and to prevent excessive sales
10 of alcoholic beverages produced by overly aggressive marketing
11 techniques. The Legislature further finds that the exceptions
12 established by this section to the general prohibition against tied
13 interests shall be limited to their express terms so as not to
14 undermine the general prohibition and intends that this section be
15 construed accordingly.

16 *SEC. 3. Section 25503.8 of the Business and Professions Code*
17 *is amended to read:*

18 25503.8. (a) Notwithstanding any other provision of this
19 chapter, a beer manufacturer, the holder of a winegrower’s license,
20 a California winegrower’s agent, a ~~distilled spirits~~ rectifier, a
21 distilled spirits manufacturer, or a distilled spirits manufacturer’s
22 agent may purchase advertising space and time from, or on behalf
23 of, an on-sale retail licensee if all of the following conditions are
24 met:

25 (1) The on-sale licensee is the owner of any of the following:

26 (A) A fully enclosed auditorium or theater with a fixed seating
27 capacity in excess of 6,000 seats, at least 60 percent of the use of
28 which is for plays or musical concerts, not including sporting
29 events.

30 (B) A motion picture studio facility at which public tours are
31 conducted for at least four million people per year.

32 (C) A retail, entertainment development adjacent to, and under
33 common ownership with, a theme park, amphitheater, and motion
34 picture production studio.

35 (D) A theme or amusement park and the adjacent retail, dining,
36 and entertainment area located in the City of Los Angeles, Los
37 Angeles County, or Orange County.

38 (E) A fully enclosed theater, with box office sales and attendance
39 by the public on a ticketed basis only, with a fixed seating capacity
40 in excess of 6,000 seats, located in Los Angeles County within the

1 area subject to the Los Angeles Sports and Entertainment District
2 Specific Plan adopted by the City of Los Angeles pursuant to
3 ordinance number 174225, as approved on September 6, 2001.

4 (F) A fully enclosed arena with a fixed seating capacity in excess
5 of 15,000 seats located in Santa Clara County. With respect to the
6 arena described in this subparagraph, advertising space may also
7 be purchased from, or on behalf of, a lessee or manager of the
8 arena.

9 (2) The advertising space or time is purchased only in connection
10 with one of the following:

11 (A) In the case of a fully enclosed auditorium or theater, in
12 connection with sponsorship of plays or musical concerts to be
13 held on the premises of the auditorium or theater owned by the
14 on-sale licensee.

15 (B) In the case of a motion picture studio facility, in connection
16 with sponsorship of the public tours or special events conducted
17 at the studio facility.

18 (C) In the case of a retail, entertainment development, in
19 connection with sponsorship of public tours or special events
20 conducted at the development.

21 (D) In the case of a theme or amusement park and the adjacent
22 retail, dining, and entertainment area, located in the City of Los
23 Angeles, Los Angeles County, or Orange County, in connection
24 with daily activities and events at the theme or amusement park
25 and the adjacent retail, dining, and entertainment area.

26 (E) In the case of the fully enclosed theater described in
27 subparagraph (E) of paragraph (1) of subdivision (a), in connection
28 with events conducted at the theater.

29 (F) In the case of a fully enclosed arena described in
30 subparagraph (F) of paragraph (1) of subdivision (a), interior
31 advertising in connection with events conducted within the arena.

32 (3) The on-sale licensee serves other brands of beer distributed
33 by a competing beer wholesaler in addition to the brand
34 manufactured or marketed by the beer manufacturer, other brands
35 of wine distributed by a competing wine wholesaler in addition to
36 the brand produced or marketed by the winegrower or California
37 winegrower's agent, and other brands of distilled spirits distributed
38 by a competing distilled spirits wholesaler in addition to the brand
39 manufactured or marketed by the distilled spirits manufacturer or

1 distilled spirits manufacturer's agent purchasing the advertising
2 space or time.

3 (b) Any purchase of advertising space or time conducted
4 pursuant to subdivision (a) shall be conducted pursuant to a written
5 contract entered into by the beer manufacturer, the holder of the
6 winegrower's license, the California winegrower's agent, *the*
7 *rectifier*, the distilled spirits manufacturer, or the distilled spirits
8 manufacturer's agent, and the on-sale licensee, which contract
9 shall not in any way involve the holder of a wholesaler's license.

10 (c) Any beer manufacturer, *rectifier*, distilled spirits
11 manufacturer, distilled spirits manufacturer's agent, holder of a
12 winegrower's license, or California winegrower's agent, who,
13 through coercion or other illegal means, induces, directly or
14 indirectly, a holder of a wholesaler's license to fulfill those
15 contractual obligations entered into pursuant to subdivision (a) or
16 (b) shall be guilty of a misdemeanor and shall be punished by
17 imprisonment in the county jail not exceeding six months, or by
18 a fine in an amount equal to the entire value of the advertising
19 space or time involved in the contract, whichever is greater, plus
20 ten thousand dollars (\$10,000), or by both imprisonment and fine.
21 The person shall also be subject to license revocation pursuant to
22 Section 24200.

23 (d) Any on-sale retail licensee, as described in subdivision (a),
24 who solicits or coerces, directly or indirectly, a holder of a
25 wholesaler's license to solicit a beer manufacturer, *rectifier*,
26 distilled spirits manufacturer, or distilled spirits manufacturer's
27 agent, holder of a winegrower's license, or California winegrower's
28 agent to purchase advertising space or time pursuant to subdivision
29 (a) or (b) shall be guilty of a misdemeanor and shall be punished
30 by imprisonment in the county jail not exceeding six months, or
31 by a fine in an amount equal to the entire value of the advertising
32 space or time involved in the contract, whichever is greater, plus
33 ten thousand dollars (\$10,000), or by both imprisonment and fine.
34 The person shall also be subject to license revocation pursuant to
35 Section 24200.

36 (e) For the purposes of this section, "beer manufacturer" includes
37 any holder of a beer manufacturer's license, any holder of an
38 out-of-state beer manufacturer's certificate, or any holder of a beer
39 and wine importer's general license.

1 *SEC. 4. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

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